

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-128114-20

Date:

April 29, 2021

Legend

Decedent	=
Spouse	=
Year	=
Country	=
Trust	=
Remainder Trust	=
Date 1	=
Date 2	=
Individual	=

Dear :

This letter responds to your authorized representatives' letter, dated December 7, 2020, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to transfer assigned assets to a trust and to satisfy the requirements under § 20.2056A-2(d)(1)(i) of the Internal Revenue Code.

The facts submitted and representations made are as follows. Prior to Decedent's death, Decedent was a U.S. citizen and was domiciled in Country where he married Spouse. During Decedent's marriage to Spouse and currently, Spouse was and is a resident and citizen of Country. Decedent died in Year. Decedent was survived by Spouse and two children. Decedent died testate, naming Spouse his sole heir and executor of Decedent's estate.

Spouse, as executor of Decedent's estate, filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return and reported Decedent's date of death as Date 1. The Form 706 was filed on Date 2, after filing a request for an

automatic extension to file the form. On Schedule M of the Form 706, the executor elected to treat Trust as a QDOT.

On Date 2, Spouse created Trust. Trust provides that, during Spouse's lifetime, the trustee shall pay, at least quarterly, to Spouse all of the net income of Trust. In addition, the trustee may pay to or for the benefit of Spouse, so much of the principal of Trust as is proper for Spouse's welfare. Trustee may also distribute such amounts of principal of Trust to Spouse, including the entire principal of Trust, which is not subject to federal estate tax under the QDOT rules. Spouse possesses a testamentary special power of appointment to appoint the remainder in Trust. In default of such appointment, the trustee shall distribute the remainder in Trust to the trustee of Remainder Trust, a trust established by Spouse.

Article III(A) of Trust provides that Trust is intended to be a Qualified Domestic Trust (QDOT).

Article III(A)(2) provides that Trust shall have at least one trustee or co-trustee that is an individual citizen of the United States or a corporation that is incorporated in the United States. Trust names Individual as the United States trustee of Trust.

Under Article III(A)(3), Trust shall comply with the requirements for security arrangements for QDOTs as set forth in § 20.2056A-2(d)(1)(i) or (ii) of the Estate Tax Regulations. Article III(A)(3)(a) provides that if the fair market value of the assets of Trust exceeds \$2 million, the trustee must at all times during the term of the trust either satisfy the U.S. Bank as trustee requirement, or furnish a bond, or furnish an irrevocable letter of credit, as required under § 20.2056A-2(d)(1)(i). The assets passing to Trust should be in excess of \$2 million. However, to date, Individual, as trustee, has not appointed a U.S. Bank, as trust, or furnished a bond, or a letter of credit.

On Date 2, Spouse, individually as surviving spouse and a beneficiary and, as well, as executor of Decedent's estate, executed an Irrevocable Assignment to assign an amount equal to the minimum necessary to reduce federal estate tax imposed upon Decedent's estate to zero, after taking full benefit of all credits (other than Decedent's unified credit) and deductions available to Decedent's estate in a manner that will qualify the transfer for the federal estate tax marital deduction on Decedent's Form 706. However, to date, the executor has not transferred the assigned assets to Trust.

Currently, there are probate proceedings pending in Country regarding Decedent's assets and rights under Country's jurisdiction.

Spouse, as executor of Decedent's estate, requests the following rulings:

(1) An extension of time under § 301.9100-3 until the completion of the administration of Decedent's estate to transfer the assigned assets to Trust; and

(2) An extension of time under § 301.9100-3 until the completion of the administration of Decedent's estate to satisfy the requirements under § 20.2056A-2(d)(1)(i) to provide a U.S. bank, as trustee, or furnish a bond, or letter of credit.

LAW AND ANALYSIS

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(d)(1)(A) and 2056(d)(2)(A) provide that if the surviving spouse of the decedent is not a United States citizen no marital deduction is allowed under § 2056(a) unless the property passes to the surviving spouse in a qualified domestic trust (QDOT).

Section 2056(d)(2)(B) provides that if any property passes from the decedent to the surviving spouse of the decedent, for purposes of § 2056(d)(1)(A), such property shall be treated as passing to such spouse in a QDOT if – (i) such property is transferred to such a trust before the date on which the return of the tax imposed by this chapter is made, or (ii) such property is irrevocably assigned to such a trust under an irrevocable assignment made on or before such date which is enforceable under local law.

Under § 2056A(a), a QDOT is any trust in which (1) the trust instrument requires that at least one trustee of the trust is an individual citizen of the United State or a domestic corporation, and provides that no distribution (other than income) may be made from the trustee unless a United States trustee has the right to withhold from such distribution the tax imposed on the distribution; (2) the trust meets the requirements as the Secretary may by regulations prescribe to ensure collection of the tax imposed by § 2056A(b)(1); and (3) an election is made by the executor of the decedent with respect to the trust.

Section 2056A(d) provides that an election under § 2056A with respect to any trust is made by the executor on the return of tax imposed by § 2001. Such an election, once made, is irrevocable. No election may be made under § 2056A on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

Section 20.2056A-3(a) of the Estate Tax Regulations provides that the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable.

Section 20.2056A-2(d)(1)(i) provides that if the fair market value of the assets passing, treated, or deemed to have passed to the QDOT, exceeds \$2 million as of the date of the decedent's death, the trust instrument must meet the requirements of either paragraph (d)(1)(i)(A) (U.S. Bank Trustee), (B) (Bond), or (C) (Letter of credit) at all times during the term of the QDOT. The QDOT may alternate between any one of the arrangements provided in paragraphs (d)(1)(i)(A), (B), and (C), provided that at any given time, one of the arrangements may be operative. The QDOT may provide that the trustee has the discretion to use any one of the security arrangements or may provide that the trustee is limited to using only one or two of the arrangements specified in the trust instrument. A trust instrument that specifically states that the trust must be administered in compliance with paragraph (d)(1)(i)(A), (B), or (C) of this section is treated as meeting the requirements of paragraphs (d)(1)(i)(A), (B), or (C) for purposes of paragraphs (d)(1)(i) and, if applicable (d)(1)(ii) of this section.

Section 20.2056A-2(d)(1)(i)(A) provides, in relevant part, that the trust instrument must provide that whenever the Bank Trustee security alternative is used for the QDOT, at least one U.S. Trustee must be a bank as defined in § 581.

Section 20.2056A-2(d)(1)(i)(B) provides, in relevant part, that the trust instrument must provide that whenever the bond security alternative is used for the QDOT, the U.S. Trustee must furnish a bond in favor of the Internal Revenue Service in an amount equal to 65 percent of the fair market value of the trust assets (determined without regard to any indebtedness with respect to the assets) as of the date of the decedent's death, as finally determined for federal estate tax purposes.

Section 20.2056A-4(b)(1) provides that under § 2056(d)(2)(B), if an interest in property passes outright from a decedent to a noncitizen surviving spouse either by testamentary bequest or devise, by operation of law, or pursuant to an annuity or other similar plan or arrangement, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, solely for purposes of § 2056(d)(2)(A), the property is treated as passing to the surviving spouse in a QDOT if the property interest is assigned to a QDOT under an enforceable and irrevocable written assignment made on or before the date on which the return is filed and on or before the last date prescribed by law that the QDOT election may be made.

Section 20.2056A-4(b)(2) provides that a transfer or assignment of property to a QDOT must be in writing and otherwise be in accordance with all local law requirements for such assignment or transfer. The transfer or assignment may be of a specific asset or a group of assets, or a fractional share of either, or may be of a pecuniary amount. In the

case of an assignment, a copy of the assignment must be submitted with the decedent's estate tax return.

Section 20.2056A-4(b)(6) provides that property irrevocably assigned but not actually transferred to the QDOT before the estate tax return is filed must be conveyed and transferred to the QDOT under applicable local law before the administration of the decedent's estate is completed. If there is no administration of the decedent's estate, the conveyance must be made on or before the date that is one year after the due date (including extensions) for filing the decedent's estate tax return. If the actual transfer to the QDOT is not timely made, § 2056(d)(1)(A) applies and the marital deduction is not allowed. Section 20.2056A-4(b)(6) further provides that an extension of time for completing the conveyance or waiving the actual conveyance, may be requested by the executor of the decedent's estate under specified circumstances under § 301.9100-1(a).

Under § 301.9100-1(c), the Commissioner may grant an extension of time under the rules set forth in § 301.9100-2 and 301.9100-3 to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-2 provides an automatic extension of time for making certain elections.

Section 301.9100-3(a) provides, in relevant part, that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 31.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

Section 301.9100-3(c)(1) provides, in relevant part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Based upon the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Therefore, we grant an extension of time until the completion of the Country administration of Decedent's estate to transfer the assigned assets to Trust and satisfy the requirements under § 20.2056A-2(d)(1)(i).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6100(k)(3) provides that it may not be used or cited as precedent. Specifically, no opinion is expressed or implied concerning the qualifications of the QDOT established herein.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: Leslie H. Finlow
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)

Copy for § 6110 purposes

cc: